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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey*

Note by the Secretariat

From 14 to 18 November 2016, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conducted an official visit to Turkey at the invitation of the Government. The visit took place just months after the attempted coup d'état in July left over 200 dead and united people across Turkey in condemnation. In its aftermath, the Government declared a state of emergency, announced a derogation from the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and adopted a series of decrees which, it averred, were meant to address the security threats that gave rise to the attempted coup. Those decrees supplemented an already dense network of anti-terrorism laws and proscriptions on expression, such as expression critical of the President and other government officials. Cumulatively, the laws preceding the attempted coup and those that followed give the authorities broad and increasingly unreviewable discretion to take measures against the press, writers, universities, jurists, civil servants, human rights defenders and many others. They have established one of the worst environments for freedom of expression in Turkey in decades, if not one that is unprecedented in its modern history.

The official mission gave the Special Rapporteur an opportunity to hear from government authorities in Ankara, as well as journalists, activists, writers, artists, lawyers, imprisoned individuals and others in Ankara and Istanbul who are facing the brunt of the restrictions. Based on his visit and his evaluation of the legal and policy framework in force, the Special Rapporteur concludes that the Government, in order to act in accordance with its international obligations, should take a number of steps as a matter of the highest priority in order to reverse the crisis and return the country to its democratic path. As an immediate measure of the highest humanitarian priority, the Special Rapporteur urges the Government to release all those detained in recent years on the basis of the exercise of their right to freedom of expression.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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** Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 25/2, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to Turkey from 14 to 18 November 2016. The purpose of the visit was to gather information, engage in a dialogue concerning freedom of expression in the country and offer recommendations to the Government and other stakeholders. During the visit, which the Government limited to five days, the Special Rapporteur visited Ankara and Istanbul.

2. The Special Rapporteur is grateful to the Government for its invitation and cooperation, in particular for facilitating meetings with government representatives. The Special Rapporteur met with senior officials at the Ministry of Foreign Affairs, the Ministry of Justice, the Prosecutor's Office, the Ministry of the Interior, the parliamentary Human Rights Inquiry Committee, the Directorate General of Press and Information, the Information and Communication Technologies Authority, the Constitutional Court and the Court of Cassation.

3. The Special Rapporteur met with journalists, writers, artists, lawyers, academics, politicians and representatives of non-governmental organizations. The Ministry of Justice permitted him to visit five individuals affiliated with *Cumhuriyet* newspaper held at Silivri prison in Istanbul: Hakan Karasinir, Bülent Utku, Güray Tekin Öz, Mustafa Kemal Güngör and Onder Celik, and the writer and activist Necmiye Alpay at Bakirköy women's prison in Istanbul. The Government denied requests to visit the imprisoned writers and journalists Asli Erdogan, Ahmet Altan, Mehmet Altan, Kadri Gursel, Murat Sabuncu, Turhan Gunay, cartoonist Musa Kart and Judge Aydin Sefa Akay.

4. The Special Rapporteur met with representatives of the United Nations country team and of diplomatic missions and greatly appreciates the support provided by the United Nations Resident Coordinator and staff members in Ankara in the execution of the mission.

5. Senior officials stressed that they were taking into consideration international recommendations to strengthen the country's commitment to freedom of expression. They emphasized that Turkey faced special challenges that required extraordinary measures to protect life, public order and national security. The authorities underscored their view that the measures taken under state of emergency decrees were necessary to counter those threats, in particular by the Gülenist movement the Government refers to as *Fethullahçı Terör Örgütü* (FETÖ) and the *Partiya Karkerên Kurdistan* (PKK or Kurdistan Workers Party, which the Government emphasizes has been listed as a terrorist organization by the United States and the European Union). The position of the Government aligned with the comments it provided to the Council of Europe Commissioner on Human Rights in February 2017 after he raised similar concerns to the ones raised in the present report.[1]

6. The Special Rapporteur understands those threats and has deep sympathy with the victims of the attempted coup in July 2016 and the instances of terrorism that have occurred in recent years. The attempted coup, widely and appropriately condemned across the political spectrum in Turkey and internationally, caused the deaths of 249 persons, including 181 civilians, and led to allegations that Fetullah Gülen and his movement bore responsibility. The war in the Syrian Arab Republic has led to a flow of refugees that taxes Turkish resources, while the end of the peace talks with Kurdish groups has led the Government to take positions far from those pursued earlier under the present administration.

7. These are serious challenges. Nonetheless, as the Special Rapporteur found during his visit, across society the laws and policies of censorship and criminalization are working to repress freedom of opinion and expression in all the places that are fundamental to

[1] See "Observations by Turkey on the memorandum of Commissioner Muiznieks on freedom of expression and media" (15 February 2017). See also Council of Europe Commissioner for Human Rights, "Memorandum on freedom of expression and media freedom in Turkey" (15 February 2017).

democratic life: the media, educational institutions, the judiciary and the bar, government bureaucracy, political space and the vast online expanses of the digital age. They do so, despite limited evidence that the restrictions are necessary to protect legitimate interests, such as national security and public order or the rights and reputations of others. Legal and institutional pressures coupled with increasing executive control and dominance, punctuated by the constitutional amendments adopted in April 2017, erode the foundations necessary for the exercise of freedom of opinion and expression. In short, the mission illuminated a squeezing of civil society space that signals a radical backsliding from the democratic path and deserves the most urgent attention to reverse.

II. International legal standards

8. Article 19 (1) of the International Covenant on Civil and Political Rights (ratified by Turkey on 23 September 2003) guarantees the right of everyone to hold opinions without interference. Article 19 (2) protects the right of everyone to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media. In accordance with Article 19 (3), any restriction imposed on this right must be provided by law and be necessary and proportionate to protect the rights or reputations of others, national security or public order, or public health and morals. Article 20 calls for the prohibition of advocacy of national, religious or racial hatred that constitutes incitement to violence, hostility or discrimination. Turkey is also bound by the law of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights and is a member of the Organization for Security and Cooperation in Europe (OSCE).

9. Article 4 of the Covenant permits derogations from article 19 (2) during declared states of emergency only where strictly necessary according to the exigencies of the situation. The right to freedom of opinion is not subject to derogation in ordinary circumstances or during states of emergency.[2] The Human Rights Committee has held that measures derogating from the provisions of the Covenant must be of an "exceptional and temporary nature".[3]

10. Government officials expressed to the Special Rapporteur the commitment of Turkey to international and regional human rights law and to the supervisory role played by the European Court of Human Rights. Members of the judiciary and the Prosecutor's Office stressed the centrality of the European Convention on Human Rights and the jurisprudence of the Court. However, several cases were brought to the attention of the Special Rapporteur, in which courts and prosecutors interpreted legislation in ways that ran counter to the rulings of the Court and judgments of the Constitutional Court in Turkey aimed at bringing its interpretation into line with European case law.

III. Domestic legal framework

11. The Constitution guarantees freedom of opinion and expression and provides a framework for limitations and exceptions. The Special Rapporteur believes that the laws and policies described below combine to create significant interference in the right to freedom of opinion and expression in Turkey.

A. Constitution

12. The Constitution of 1982 guarantees the right to freedom of opinion and expression, while also permitting problematic restrictions. Article 25 protects opinion, while article 26 protects the "right [of everyone] to express and disseminate his/her thoughts and opinions

[2] See Human Rights Committee general comment No. 34 (2011) on the freedoms of opinion and expression, para. 5.

[3] See Human Rights Committee general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency.

by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities." Through Act no. 4709, on 3 October 2001 the Parliament amended article 26 to permit restrictions:

> "... for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as State secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary."

13. Articles 28 and 29 of the Constitution safeguard the freedom of the press. Nonetheless, several grounds are provided for restricting press freedom: "Anyone who writes or prints any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets and anyone who prints or transmits such news or articles to others for the above purposes, are held responsible under the law relevant to these offences". Article 28 (6) (7) and (8) and article 29 provide conditions for the suspension and seizure of publications.

B. Legislation

Combating terrorism

14. The Penal Code, the Code of Criminal Procedure and the antiterrorism law (Law No. 3713) limit constitutional guarantees. Several provisions of the antiterrorism law concern membership in and propaganda supporting terrorist organizations, yet key terms are left undefined. The law does not define acts that would constitute terrorism but article 1 (1) covers:

> "... any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat."

15. Article 7 (2) of the antiterrorism law permits punishment of a term of one to five years' imprisonment for those who make "propaganda of a terrorist organization by justifying or praising or inciting the terrorist organizations' methods which contain violence, force or threat". The provision also increases the punishment by half for propaganda expressed through the press or a publication.

16. The Penal Code punishes membership in criminal organizations. According to article 6, membership of a criminal organization includes "any person who establishes, controls or joins a criminal organization". Article 220 (8) provides for one to three years' imprisonment for anyone who makes "propaganda for an organization in a manner which would legitimize or praise the terror organization's methods including force, violence or threats or in a manner which would incite use of these methods". The article increases the penalty by half if the propaganda is expressed through the press or a broadcast medium.

17. The Government has a critical duty to protect against terrorist threats, but international law mandates respect for human rights in the fight against terrorism.[4] In keeping with these dual requirements, criminal offences should be narrowly defined and applied according to strict implementation of the standards of necessity and proportionality.

[4] See, for example, General Assembly resolution 57/219, Human Rights Committee general comment No. 29 and A/HRC/6/17 and Corr.1.

Despite this, counter-terrorism and national security provisions in Turkish legislation are used to restrict freedom of expression through overly broad and vague language that allows for subjective interpretation without adequate judicial oversight.

Defamation and insult

18. The civil and criminal law provide for the suppression of defamation, even of public authorities. Article 125 of the Penal Code criminalizes insult; paragraph 3 concerns defamation against "a public officer due to the performance of his public duty" as well as insults against beliefs, including religious ones, with penalties of at least one year in prison. Part 3 of the Penal Code criminalizes "insult" of the President, the national anthem, the national flag and the institutions and organs of the State and increases the penalty for such crimes by one sixth if made in public. Article 299 of the Penal Code criminalizes defamation of the President, with sentences of one to four years in prison. Although the Minister of Justice must formally initiate cases, prominent officials, including the President, frequently bring criminal defamation cases against journalists, artists and academics. Reports indicate that the Ministry of Justice has initiated up to 2,000 defamation cases for "insult" of the President.[5]

Surveillance

19. Law 6532 (2014) grants the National Intelligence Organization the power to access personal data without a court order.[6] Under article 3, the Organization has the authority to collect information, documents and data from public institutions, financial institutions and entities with or without a legal character. All institutions and entities must comply with its demands for access to their data and archives. Article 7 establishes severe punishments for obtaining or publishing information about the Organization. The article makes distribution of information or documents related to it punishable by three to nine years in prison. If prosecutors receive complaints regarding the activities of the Organization, article 6 obliges them to notify the Director, who can then choose to block the investigation.

Internet

20. Law no. 5651, the Internet law, allows the Government to restrict access to Internet content and telecommunications networks. Amendments in March 2015 introduced article 8 (a), which expanded the power of the Telecommunications and Communication Presidency (which has now been incorporated into the Communication Technologies Authority) to ordering the blocking of websites on vaguely defined grounds and without prior court approval. Article 8 concerns blocking with respect to encouragement of and incitement to suicide; sexual exploitation and abuse of children; facilitation of the use of drugs; provision of substances dangerous to health; obscenity; gambling; and crimes committed against Atatürk. "Sufficient suspicion" enables a court or the Communication Technologies Authority to issue a blocking order. The Internet law also regulates the blocking of websites, allowing the Government to restrict access to network services. Four articles provide for the blocking of websites and posts: article 8 (protection of children from harmful content); article 8 (a) (protection of national security, public order, protection of life and property and protection of public health and prevention of crime); article 9 (violation of individual rights); and article 9 (a) (violation of the privacy of individuals).

21. Article 10 of the Internet law provides broad authority to monitor the Internet and issue administrative blocking decisions or restrict access to certain websites. As of 2015, the Government had used the blocking measures, along with related court decisions, to

[5] For an overview of Turkish law and freedom of expression generally, see Yaman Akdeniz and Kerem Altiparmak, "Silencing effect on dissent and freedom of expression in Turkey", in *Journalism at Risk: Threats, Challenges and Perspectives*, Onur Andreotti, ed. (Strasbourg, Council of Europe Publishing, 2015).

[6] Joint submission of freedom of expression organizations to the universal periodic review of Turkey (2014), available from uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1390&file=EnglishTranslation.

block over 110,000 websites and over 16,500 URLs (web addresses).[7] Under emergency decree No. 671, the Information and Communications Technology Authority implements blocking and filtering orders. In requesting access bans, the Office of the Prime Minister submits a formal request to the Authority, which must forward the request to a criminal peace judge within a 24-hour period. If approved within 48 hours, all relevant service providers are obliged to acquiesce in the decision, otherwise the decision is automatically revoked. There is no appeal following a court order. The regulation on collective Internet use providers, published in the Official Gazette on 11 April 2017, requires collective Internet use providers to apply detailed filter systems to identify content deemed criminal, store the access details and data of users for two years and develop systems to identify Internet users in public places.[8] The criteria for filtering are not publicly available and the Government does not provide a list of what is filtered. Decree No. 671 amended Law 5809 (law on digital communications) to authorize the Government to take "any necessary measure" on the grounds of "national security, public order, prevention of crime, protection of public health and public morals, or protection of rights and freedom" and to notify the Authority for their implementation. Any company providing digital communications must enforce an order by the Authority within two hours.

22. Article 4 of the Internet law provides for the general liability of content and hosting providers, protecting them from liability for content to which they link. Providers may receive requests from the Government and private individuals or companies to take down specific content. They are required under article 9 (2) of the law to respond to claims of violations of individual rights within 24 hours.

23. The blocking of Internet sites has been ruled unconstitutional by the European Court of Human Rights and the Constitutional Court. The Constitutional Court ruled that a ban on Twitter in 2014 violated freedom of expression guarantees and concluded that banning access to Twitter by an administrative act had no legal basis and gave rise to a serious violation of freedom of expression.[9] The Court also found that a ban on access to YouTube (to prevent disclosure of State secrets) breached the applicant's right to freedom of expression. The Court held that there was no legal provision in the Internet law allowing the authorities to impose blanket blocking orders on access to the entire website on account of one example of content.[10]

C. State of emergency

24. On 21 July 2016, the Government notified the Secretary-General of its invocation of article 4 (derogation) of the International Covenant on Civil and Political Rights and that the derogation applied to obligations under, inter alia, article 19 of the Covenant.[11] The Government has introduced a series of legal amendments through emergency decrees, which bypass ordinary legislative procedure and will continue to be in effect after the state of emergency is lifted. Among those laws are amendments made to the antiterrorism law and the electronic communications law (both through decree No. 671). The electronic communications law was amended to expand the grounds for content takedown.

25. The state of emergency, endorsed by the parliament on 21 July 2016, announces its purpose as: "to take required measures in the most speedy and effective manner in the fight

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[7] See Swiss Institute of Comparative Law for the Council of Europe, "Comparative study on blocking, filtering and take-down of illegal Internet content" (December 2015), available from https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806554bf.

[8] The regulation is available in Turkish only from www.resmigazete.gov.tr/eskiler/2017/04/20170411-3.htm.

[9] Constitutional Court, application No. 2014/3986, 2 April 2014.

[10] Constitutional Court, application No. 2014/4705, 29 May 2014. See also European Court of Human Rights, *Ahmet Yildirim v. Turkey*, judgment of 18 December 2012, and *Cengiz and others v. Turkey*, judgment of 1 December 2015.

[11] Notification under article 4 (3), 21 July 2016, available from https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf.

against FETÖ terrorist organization in order to save our nation from this ferocious terror network and return to normalcy as soon as possible."[12] The declaration emphasizes that the purpose is "not to restrict fundamental freedoms of our citizens".[13]

26. Decrees adopted since July 2016 have broadened the scope of the original emergency to include those who "belong to, connect to, or have contact with the Fetullahist Terrorist Organization" (decree No. 668), public personnel who have "membership, affiliation or connection to the Fetullahist Terrorist Organization" and even the spouses and children of such persons (decree No. 670). Decree 671 amended Law 5651 denying employment in the Communication Technologies Authority to persons who have "membership, affiliation, link or connection with" terrorist groups, without limiting the ban to the Gülen movement.

27. In the time between the imposition of the state of emergency and the Special Rapporteur's visit, the Council of Ministers issued 10 emergency decrees with the force of law, granting the Turkish authorities wide-ranging powers.[14] Article 15 of the Constitution provides that measures under a state of emergency must not "violate obligations under international law" and that even under a state of emergency certain fundamental rights must be respected. According to the law on the state of emergency of 1983, the scope of such decrees should be limited to the original emergency purpose.[15] That law sets out 17 types of measures, including those that allow for prohibition or restrictions applicable to publications, broadcasting and the dissemination of information and ideas through any media, and plays and films. The state of emergency continues in force at the time of writing, having been renewed for a fourth three-month period on 17 April 2017.

28. The state of emergency decrees adopted in the aftermath of the attempted coup are far-reaching and give the authorities wide discretionary powers to derogate from human rights obligations, without providing adequate channels for judicial review and appeal. The emergency decrees apply to anyone "assessed to be" a member of a terrorist organization and to anyone acting in union or contact with such organizations. The decrees lack criteria for assessing membership or contact and leave overly broad discretion to the authorities responsible for their execution, waiving ordinary administrative safeguards. The lack of criteria for assessing membership also applies to the procedures by which the High Council of Judges and Prosecutors, the High Courts and the Constitutional Court are empowered to dismiss judges and prosecutors. The decrees do not specify the criteria on which such assessments are to be based, nor do they require individualized reasoning. The persons concerned are not provided with evidence against them; many are unaware that they are being investigated. The decrees also facilitate impunity and lack of accountability by affording full legal, administrative, criminal and financial immunity to the administrative authorities acting within the framework of the decrees.

29. The Constitutional Court decided in landmark decisions to reject the limits to judicial review of the decrees imposed by article 148 of the Constitution, which provides that "decrees having the force of law issued during a state of emergency … shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance".[16] On 12 October 2016, however, the Court unanimously voted to uphold the limits imposed by article 148 in the case of the emergency decrees. Applications that

[12] English translation of the relevant articles of the Constitution and Law No. 2395 on the state of emergency, available from https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069538b.

[13] Ibid.

[14] Eleven additional decree laws were issued between the time of the visit of the Special Rapporteur and the time of the finalization of the present report in April 2017. In total therefore, since 20 July 2016, 21 emergency decrees with the force of law have been issued. Extracts of English translations of the emergency decree laws by the European Commission for Democracy through Law are available from www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)011-e.

[15] English translation available from www.legislationline.org/documents/action/popup/id/6974.

[16] See Constitutional Court decisions E.1990/25, K.1991/1, E.1991/6, K.1991/20, E.2003/28 and K.2003/42.

claimed the unconstitutionality of emergency decrees could no longer be subject to review by the Court. Thus, while the Constitution on the one hand imposes limits on derogations from human rights requirements, it fails to provide an effective oversight mechanism to ensure that the limits are observed.

30. Following the Special Rapporteur's visit, emergency decree No. 685 of 23 January 2017 established a Commission of Inquiry for State Emergency Practices, tasked with reviewing and deciding on complaints about emergency practices. Composed of seven members, of whom five are assigned directly by the Government and two by the Government-dominated High Council of Judges and Prosecutors, the Commission is to "carry out an assessment of and render a decision on" state of emergency measures that fall into one or more of four listed categories: (a) dismissal or discharge from public service, profession or organization; (b) dismissal from studentship; (c) closure of associations, foundations, trade unions, media outlets, schools and higher education institutions and publishing houses; (d) annulment of the ranks of retired personnel. Article 2 of decree No. 685 prevents the lodging of separate applications regarding additional measures introduced by decree. Members of the Commission were appointed on 16 May 2017 and the Commission began its work on 22 May 2017. The Special Rapporteur is concerned about the narrow scope of the Commission mandate and its lack of independence and impartiality.

IV. Attacks on the media and the right to information

31. On the basis of emergency decrees, over 100 media outlets were reportedly closed during the first six weeks of the state of emergency.[17] Since 15 July 2016 and the time of writing, reports indicate that at least 177 media outlets have been closed; 231 journalists have been arrested (over 150 journalists are in prison); nearly 10,000 journalists and media workers have been dismissed; and the press cards of at least 778 journalists have been cancelled.[18] Publications taking seriously investigative journalism and their role as a public watchdog frequently face harsh penalties under laws on combating terrorism, insult and the state of emergency. Many of the closures affect outlets allegedly connected to the Gülenist movement, such as the large circulation *Zaman*, but many others have involved outlets without any such evident connections.[19] While the situation has intensified in the period since the attempted coup, the assault on the press began well before July 2016.

32. In meetings with the Special Rapporteur, the authorities stressed that no journalist was prosecuted for "being a journalist", but for having committed a crime. However, as seen below, examples of journalist arrests and prosecutions demonstrate an expansive definition of crime interfering with the core values of freedom of expression.

A. Arrest, detention and harassment of journalists

33. At the time of the Special Rapporteur's visit, an estimated 155 journalists and media workers had been imprisoned, in most cases based on vague charges and with either very little or no evidence presented or publicly available.[20] The figures may not reflect those who

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[17] The complete list of media outlets closed under decree No. 668 is available in Turkish from www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1.pdf. See also https://rsf.org/en/reports/turkey-you-cannot-report-news-under-state-emergency.

[18] See www.hurriyetdailynews.com/894-turkish-journalists-dismissed-since-january-2016-report.aspx?pageID=238&nID=99181&NewsCatID=339 and http://bianet.org/english/media/183723-2016-journalism-gripped-by-state-of-emergency.

[19] See statement by the Special Rapporteur on 8 March 2016, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17172&LangID=E. The Government claimed to the Council of Europe that it had reopened 300 "institutions", including 20 media outlets, see "Observations by Turkey on the memorandum of Commissioner Muiznieks".

[20] See communication from the Special Rapporteur and other special procedure mandate holders of 28 July 2016, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3292.

were released but continue to face charges and potential future imprisonment. What follows is a small sample of illustrative cases brought to the attention of the Special Rapporteur.

34. The intense pressure and harassment of Turkey's oldest newspaper, *Cumhuriyet*, stands out as one prominent example. On 31 October 2016, the authorities detained 16 staff members of *Cumhuriyet*, all of whom remain in prison at the time of writing.[21] The Prosecutor's Office in Istanbul justified the arrests by referring to material published by the newspaper shortly before the coup, which allegedly justified the coup. Predating the attempted coup, the authorities arrested senior editors of the newspaper on counter-terrorism charges based solely on their reporting; both the editor-in-chief, Can Dündar, and the Ankara bureau chief, Erdem Gül, were convicted and sentenced to prison, although Mr. Dündar has since been forced into exile.[22] Mr. Dündar and Mr. Gül were held in detention for 92 days and released only after the Constitutional Court held that their detention was a violation of their rights. They were later convicted by Istanbul's 14th court for serious crimes and sentenced to 5 years and 5 years and 10 months in prison, respectively, for "revealing State secrets".[23] Following an assassination attempt in Turkey, Mr. Dündar left Turkey for exile and is at risk of losing his citizenship by virtue of an emergency decree, while his wife's passport has been annulled, preventing her from leaving Turkey.[24] In late December, the authorities arrested another *Cumhuriyet* investigative journalist, Ahmet Sik, accusing him of "publicly humiliating the Republic of Turkey, its judicial organs, military and police organizations" and of spreading "terrorist propaganda".[25]

35. Prosecutors regularly make allegations against individuals that are impossible to disprove. For example, on 10 September 2016, Ahmet and Mehmet Altan, two well-known intellectuals, were detained as part of the investigation launched following the attempted coup and accused of transmitting "subliminal messages" in support of the coup on a television talk show. After 12 days in detention, on 22 September 2016, the 10th criminal judgeship of peace in Istanbul ordered Mehmet Altan to be held in pretrial detention on charges of "being a member of a terror organization" while also ruling to release his brother on probation. Ahmet Altan was arrested again later in the day after the Public Chief Prosecutor objected to his release. Both remain in detention at the time of writing.

36. The closure of the daily newspaper *Özgür Gündem* by emergency decree No. 675 demonstrates the widespread consequence of the crackdown on national security grounds. The legal actions taken against the newspaper targeted both its regular staff and people who had loose connections to the newspaper, such as its advisers or honorary editors, many of whom are intellectuals wanting to make a contribution towards solving the Kurdish issue through dialogue.[26] The arrest and detention of Asli Erdogan and Necmiye Alpay on the basis of article 314 of the Penal Code (being a "member of a terror organization") for having served on the consultative board of *Özgür Gündem* illuminate the lack of necessity and proportionality in the way counter-terrorism legislation is used against the right to

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and response from the Government, 6 December 2016, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=46059.

21 See http://bianet.org/english/media/180156-operation-in-cumhuriyet-daily-14-taken-into-custody.

22 See www.hurriyetdailynews.com/cumhuriyets-editor-in-chief-to-pay-heavy-price-says-turkish-president-.aspx?pageID=238&nID=83269&NewsCatID=338.

23 See www.bbc.com/news/world-europe-36233282.

24 See www.turkeypurge.com/turkey-purge-in-past-5-days-288-arrested-457-others-detained-over-coup-charges.

25 See www.pen-international.org/newsitems/turkey-investigative-journalist-ahmet-sik-arrested/. In 2014, in the case of *Sik v. Turkey*, the European Court of Human Rights held that an earlier arrest and detention represented a violation of the right to freedom of expression (application No. 53413/11).

26 See communication from the Special Rapporteur and the Special Rapporteur on the situation of human rights defenders of 24 June 2016, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3229; and the response from the Government, 3 August 2016, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=44892. On the arrests of Kurdish journalists, see communication from the Special Rapporteur and the Chair of the Working Group on Arbitrary Detention of 4 September 2015, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=18460.

freedom of expression. Both were kept in prison for more than four months, before being released on 29 December 2016, but continue to face trial and potentially lifelong prison terms and are barred from leaving the country.

37. Because of the mandate's historic concern for the safety of journalists and writers, the Special Rapporteur sought access to a number of detainees. The Ministry of Justice permitted him to visit five individuals affiliated with *Cumhuriyet* and activist Necmiye Alpay, as noted above (see para. 3). The Special Rapporteur also spoke with lawyers for or associates of other detainees. The Ministry of Justice denied the Special Rapporteur access to others (see para. 3). While the detainees he visited seemed in good health, the men held in a wing of Silivri prison which, according to the Government, houses 456 prisoners,[27] reported an initial detention process that involved days without access to information about the charges against them, or access to legal support and at least two days of sleep deprivation that culminated in a court appearance at 2 a.m. They reported limited access to counsel, books, pen and paper, or other ways to access information or communicate with the outside world. They expressed total bewilderment at the basis for their detention.

B. Media closures

38. Media freedom in Turkey was under threat prior to July 2016. Since then, the scope of the crackdown has broadened dramatically. On 27 July 2016, on the basis of emergency decrees No. 667 and No. 668, the authorities ordered the closure of over 130 media outlets and publishers. On 28 September 2016, another 12 television and 11 radio stations (owned or operated by members of the Kurdish or Alevi communities) were shut down, without the involvement of the judiciary or any review procedure, on charges that they spread "terrorist propaganda".[28] On 29 October 2016, another 11 Kurdish newspapers, two news agencies and three magazines were shut down on the basis of emergency decree No. 676.[29]

39. The crackdown affects media outlets affiliated with the Gülen movement and journalists working or having previously worked for such outlets, journalists perceived to have connections to the Gülen movement, independent, oppositional or minority media outlets and journalists accused of affiliation with the Gülen movement, despite little or no evidence to support such accusations. Dozens of journalists working for such outlets have been imprisoned, while many others have been left unemployed, despite only distant, if any, evidence of connection to the movement, let alone activities unlawful under Turkish law and subject to limitation under human rights law.

40. The crackdown on media outlets also takes place through government takeovers. On 5 March 2016, the large-circulation *Zaman* group was taken over by a government-appointed administrative board over alleged links between the owner of its parent company and Gülen.[30] This form of takeover immediately results in a change of editorial policy for the journals and channels under the umbrella of the commandeered parent group.

41. Media outlets subject to the emergency decrees are not limited to media allegedly affiliated to Gülen. The closure of *Özgür Gündem* and the book publisher *Evrensel*, and police raids on *Cumhuriyet* are examples of how the state of emergency has been deployed against critical or independent media outlets and publishers. On 16 August 2016, the daily *Özgür Gündem* was closed following a decision by the 8th criminal court of peace in Istanbul, on the basis of allegedly publishing terrorist propaganda and serving as a broadcasting organ for the PKK. The same day, the paper's headquarters in Istanbul were

[27] Silivri prison in combination with its general campus of 10 prisons and detention houses hosts 13,000 prisoners.

[28] See www.reuters.com/article/us-turkey-media-idUSKCN12012K.

[29] *Özgür Gündem*, *Azadiya Welat*, *Batman Çağdaş*, *Cizre Postası*, *Güney Express*, *İdil Haber*, *Kızıltepe'nin Sesi*, *Prestij Haber*, *Urfanatik* and *Yüksekova Haber*, *Dicle News Agency (DİHA)* and *Jin News Agency*, *Tiroj*, *Özgürlük Dünyası* and *Evrensel Kültür*.

[30] See communication of the Special Rapporteur of 8 March 2016, available from https://spdb.ohchr.org/hrdb/33rd/public_-_AL_TUR_08.03.16_(2.2016).pdf.

raided and 22 media workers detained on charges of "resisting the police". They were released after giving testimony before prosecutors.

42. On 28 August 2016, the central offices of *Azadiya Welat*, in Diyarbakir, were raided by police and 23 employees were detained. Eight remained in detention as of January 2017.

43. Several interlocutors commented that the media landscape was dominated by close ties between business interests and political actors. Journalists who were critical of the Government have been gradually fired from these media organs and mild criticism is subject to reprisals through demonization by pro-Government columnists. In addition to the arrest of journalists and police raids on critical media, the use of financial pressure or economic ties with private media companies has led to a higher concentration of media that is directly or indirectly under government control.

44. The authorities exert pressure on media outlets to change their editorial policies by threatening journalists with dismissal. News coverage that is perceived as negative to the State may be subject to punishment by the authorities. The Special Rapporteur understands that the Radio and Television Supreme Council has imposed fines on television channels for "one-sided" coverage, in particular on the situation in the south-east of the country.

45. In October 2016, seven critical television channels were removed from the leading satellite television provider, Digitürk. Similarly, a number of channels were removed from the State-owned satellite distribution platform TÜRKSAT.[31]

C. Revocation of press cards

46. As a result of the media closures and the blacklisting of journalists working for shuttered outlets over 3,000 journalists are without work and unable to obtain new employment. Over 775 yellow press cards, reflecting official accreditation, have been cancelled;[32] other journalists are barred from attending and reporting on parliamentary meetings, depriving them of a critical tool for monitoring the Government. The Special Rapporteur is deeply concerned that the large number of cancelled press cards undermines the right of the public to information and the accountability of State institutions.

47. The Directorate General of Press and Information, a body under the control of the Prime Minister's Office, is tasked with accreditation. The composition of the Press Card Commission, a functional part of the Directorate General, has changed, reducing the number of seats for media representatives and damaging the impartiality of the accreditation process. The procedures for accreditation grant the Deputy Prime Minister the power to issue permanent press cards, a tool reportedly used to screen out journalists. For example, in December 2016, the request for renewal of his press card by Can Dündar of *Cumhuriyet* was rejected with the Directorate General stating: "The request of Can Dündar, who on every occasion defames Turkey and attributes false statements to Turkey, has been denied due to national security policy".[33] Journalist Amberin Zaman's card was cancelled on the grounds that she led to polarization among the public by inciting people to hatred and enmity. The press cards of Hasan Cemal, columnist on the T24 news portal, and Dogan Akin, editor-in-chief of T24, were also cancelled.[34] The same has been applied to foreign journalists.

V. Restrictions on the Internet

48. All individuals face censorship online, with a serious impact on the right of the public to seek, receive and impart information and ideas regardless of frontiers. In

[31] See www.hurriyetdailynews.com/gulen-linked-tv-stations-removed-from-top-satellite-network.aspx?pageID=238&nID=91163&NewsCatID=341 and www.turkishminute.com/2016/04/13/80000-unsubscribed-digiturk-removal-critical-channels/.

[32] See https://turkeypurge.com/govt-revokes-journalist-amberin-zamans-press-card-brings-total-to-623.

[33] See https://turkeypurge.com/can-dundars-request-for-renewal-of-press-card-denied.

[34] See https://turkeypurge.com/turkey-revokes-permanent-press-cards-of-leading-journalists.

December 2016, the Ministry of the Interior stated that the authorities had opened investigations into 10,000 people over social media posts, while 3,710 persons had been detained for questioning and 1,656 suspects had been formally arrested over the previous six months.[35]

Blocking of websites

49. As of March 2017, over 100,000 websites had reportedly been blocked in Turkey.[36] The Government has blocked access to web addresses, including pro-Kurdish websites and news sources and their Twitter accounts.[37] The Supreme Electoral Council of Turkey blocked access to over 90 web addresses for sharing polls before the elections. The Communication Technologies Authority has blocked access to five of the most commonly used lesbian, gay, bisexual, transgender and intersex websites by applying article 8 of Law No. 5651. Following an order by the criminal court of peace in Ankara in March 2015, 49 web addresses were banned.

50. The Government pursues a policy of blocking websites following terrorist attacks. Two days after a suicide attack on 20 July 2015 in the town of Suruç, in which 32 people were killed, a court banned access to 173 web addresses, as part of a ban on images and footage of the attack.[38] The gagging order was later lifted. Similarly, following a terrorist attack on 10 October 2015 in Ankara, in which more than 100 people were killed, the Radio and Television Supreme Council imposed a ban on broadcasting images and videos of the attack and four days later, a court in Ankara banned "all kinds of news, interviews, criticism and similar publications in print, visual, social media and all kinds of media on the Internet" related to investigation of the attack.[39] Similar orders have been repeated in the case of other attacks.[40]

51. Despite national and European court rulings against the blocking of access to Twitter and YouTube, first instance courts continue to order such blocking, citing national security as justification. On two occasions in April and July 2015, criminal peace judges briefly blocked Facebook, Twitter and YouTube following the wide circulation of images related to terrorist acts, finding that they amounted to "terrorist propaganda".[41]

Takedown requests

52. Turkey features among the countries with the highest number of removal requests sent to Twitter. In 2016, 4,013 removal requests were made by Turkish agencies, while 1,556 removal requests were made by Turkish courts.[42] According to the Facebook report on government requests for the period January-June 2016, the company sought to restrict 861 pieces of content in response to requests from the Telecommunications Authority,

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[35] See www.reuters.com/article/us-turkey-security-internet-idUSKBN14D0E8.

[36] See, for example, http://stockholmcf.org/scfs-website-blocked-in-turkey/ and https://edri.org/turkey-new-attempts-limit-online-access-and-freedom-of-speech/.

[37] See Freedom House, "Freedom on the Net 2016: Turkey" available from https://freedomhouse.org/report/freedom-net/2016/turkey. Such blocking predates the attempted coup. See, for example, https://cpj.org/2015/07/turkish-authorities-block-access-to-news-websites.php, www.hurriyetdailynews.com/turkey-blocks-kurdish-websites-as-twitter-and-facebook-slows-down.aspx?pageID=238&nid=85917, and www.pen-international.org/newsitems/turkey-end-crackdown-in-the-kurdish-regions-and-seek-a-peaceful-solution/.

[38] See http://platform24.org/en/articles/300/twitter-ban--due-to-suruc-attack-images--lifted-in-turkey, www.hurriyetdailynews.com/turkish-court-blocks-twitter-for-hours-issues-media-ban-over-bombing.aspx?pageID=238&nID=85757&NewsCatID=339, and www.article19.org/resources.php/resource/38067/en/turkey-must-ensure-free-and-open-debate,-online-and-offline,-in-the-wake-of-terrorist-attack-in-suru%C3%A7.

[39] See www.hurriyetdailynews.com/court-issues-total-media-ban-over-ankara-suicide-bombings.aspx?PageID=238&NID=89884&NewsCatID=341.

[40] See https://cpj.org/blog/2016/09/turkey-crackdown-chronicle-week-of-september-11.php and https://turkeypurge.com/breaking-reporting-breaking-news-banned-in-turkey.

[41] See www.article19.org/resources.php/resource/37923/en/turkey:-social-media-sites-restored-after-blanket-blocking.

[42] See https://transparency.twitter.com/en/countries/tr.html.

Turkish courts, the Ministry of Health, the Ministry of Customs and Trade and the Access Providers Union.[42]

Network shutdowns

53. The authorities ordered network shutdowns in 11 cities in the south-east of the country on 26 October 2016, following the detention of the mayor and co-mayor of Diyarbakir. The shutdown lasted approximately 12 hours and cut off 6 million citizens. Similar shutdowns took place on 12 September and 4 November 2016.[43]

Criminalization of encryption

54. Several examples were brought to the attention of the Special Rapporteur of people being arrested for the alleged use of an encrypted messaging application, called ByLock. The authorities have linked ByLock to the Gülen movement, claiming that it is a secret communication tool for Gülenists. The arrests take place sometimes merely on the basis of the existence of ByLock on a person's computer and the evidence presented is often ambiguous. The National Intelligence Organization reportedly obtained a list of global ByLock users that has been used to track and detain persons. Tens of thousands of civil servants have reportedly been dismissed or arrested for using the application.[44]

VI. Academic freedom

55. Even before the attempted coup, the Government had taken aim at academics. In January 2016, thousands of academics signed a peace petition condemning the security operations in cities in south-eastern Turkey.[45] The petition called for a resumption of peace talks with the PKK. In response, many university administrations, on the instructions of the Higher Educational Council, have taken disciplinary action, including dismissing signatories from their positions. The Government argues that the petition echoed a statement previously made by a PKK leader and thus constituted the spread of terrorist propaganda and insult to the State. On 15 January 2016, at least 18 academics were detained and investigated by the Istanbul Prosecutor's Office.[46]

56. Emergency decree No. 675 has been used to dismiss academics from university appointments.[47] The Special Rapporteur spoke with academics who were at a loss to identify any cause for their removal, as they had no connection to the Gülenist movement or to the PKK. Following the attempted coup, the Government dismissed approximately 27,000 schoolteachers, as well as over 5,000 professors and administrators at universities.[48] The licences of approximately 21,000 teachers in schools operated by the Gülenist movement were cancelled.[49] Teachers of Kurdish origin, those with leftist views, or those who teach subjects such as science have reportedly been targeted. Elections within

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[42] See https://governmentrequests.facebook.com/.

[43] See https://turkeyblocks.org/2016/09/11/internet-shutdown-turkey-southeast/ and https://turkeyblocks.org/2016/11/04/social-media-shutdown-turkey/.

[44] See http://stockholmcf.org/detention-warrants-issued-for-98-across-18-provinces-over-bylock-e-a/.

[45] See communication from the Special Rapporteur and the Special Rapporteur on the situation of human rights defenders of 31 March 2016, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=21348.

[46] See www.hurriyetdailynews.com/18-academics-detained-over-130-face-criminal-charges-amid-accusations-by-president-of-terrorist-propaganda.aspx?PageID=238&NID=93887&NewsCatID=339. On 27 March 2017, Isik University dismissed a further two faculty members who had been signatories to the petition, see www.endangereduscholarsworldwide.net/single-post/2017/03/28/%C5%9E%C4%B1k-University-dismisses-two-Academics-for-Peace-signatories.

[47] See www.scholarsatrisk.org/2016/11/1267-academics-dismissed-68-students-abroad-expelled-says-turkey-decree/.

[48] See www.hurriyetdailynews.com/turkey-has-dismissed-over-27000-teachers-suspended-9000-deputy-pm.aspx?pageID=238&nid=104048.

[49] See https://freedomforturkishacademics.wordpress.com/category/situation-in-turkey/.

administrators have been abolished and replaced with direct appointments by the President of the Republic, in effect erasing the autonomy of universities.

57. Under the state of emergency decrees of February 2017, another 330 academics were expelled, together with 2,585 schoolteachers.[51] At universities, seminars are reportedly being cancelled because professors have been dismissed. The content of classes must reportedly be relayed to higher officials for approval. Further, members of several teachers' unions expressed fear that the Government would eradicate the choice for secular education.

VII. Political activity

58. The space for political pluralism is shrinking and opposition parties face terrorism-related accusations. On 20 May 2016, the immunity of 154 members of parliament from all political parties was retroactively lifted by a temporary amendment to the Constitution (Law No. 6718). The amendment primarily targeted the parliamentary group of the People's Democratic Party, an opposition party, which had been subject to prosecution requests for statements that were deemed insulting to the President or other public officials, terrorist propaganda or incitement to hatred.[52] Several leaders of the People's Democratic Party have been imprisoned on the basis of emergency decrees and on charges of making "false propaganda".[53] In addition to the existing 683 cases, 117 investigations were initiated in the months leading up to the Special Rapporteur's visit.[54] Of those cases, 500 concern members and members of parliament of the People's Democratic Party. The co-chairs of the Party were arrested in November 2016[55] and later charged with propaganda, protest, incitement and similar crimes related to legitimate expression.[56] They were sentenced to up to one year in prison and lost their parliamentary seats. Approximately 2,000 members of the HDP have been detained since the attempted coup and 13 Party deputies are currently in prison.

VIII. Dismissal of public officials

59. Between the time of the attempted coup and the Special Rapporteur's visit, approximately 74,000 public officials were removed from government positions and 100,000 from public office for political, religious or other beliefs. The dismissals took place without trial, investigation or appeal possibilities. The Government issued "blacklists" containing the names of those removed from public office, reducing the possibility that they would be re-employed in either the public or private sector, leading to what one civil servant described as "civil death". According to figures provided by the Government, 30,000 public officials have been reinstated.

60. The Special Rapporteur is particularly concerned that the dismissals failed to identify specific criminal acts carried out by the targeted officials. In that context, it may be that the penalties target the opinions of individuals, as reflected in their alleged associations, in violation of article 19 (1) of the International Covenant on Civil and Political Rights.

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[51] See https://www.scholarsatrisk.org/2017/02/330-academics-ordered-dismissal-turkey/.

[52] Information note of the Ministry of Justice on the constitutional amendment as to lifting parliamentary immunity introduced by the law 6718, available from www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)055-e

[53] See https://turkeypurge.com/police-detain-70-hdp-members-administrators-in-istanbul and Council of Europe Commissioner for Human Rights, "Memorandum on freedom of expression and media freedom in Turkey".

[54] See www.turkishminute.com/2016/06/11/justice-minister-community-files-117-deputies-sent-prosecutors/.

[55] See http://ne.com.tr/en/politics/turkey-hdp-co-chair-jailed-in-terror-investigation-/679014.

[56] See www.hurriyetdailynews.com/prosecutor-seeks-up-to-142-years-in-prison-for-jailed-hdp-co-chair-reps.aspx?pageID=238&nID=108635&NewsCatID=338.

IX. Civil society

61. Representatives of civil society emphasized that the deterioration in the right to freedom of expression did not result solely from the state of emergency. Pressures on civil society organizations limited the ability of individuals to enjoy freedom of expression, whether individually or as a collective. On 11 November 2016, 370 non-governmental organizations (NGOs) operating in Turkey were suspended under an emergency decree for alleged links with terrorist organizations. The Ministry of the Interior assured the Special Rapporteur that all suspensions would be individually reviewed, but on 22 November 2016, all the 370 suspended NGOs, plus an additional 5, were permanently closed and their assets seized under emergency decree No. 677. That brought the number of NGOs closed since the attempted coup to 1,495.[57] According to figures provided by the Government, 187 associations and 21 foundations have been reopened by decree laws. During the mission, the Special Rapporteur met with representatives of artistic and cultural centres, women's rights organizations, children's rights organizations and organizations working toward equality on the basis of sexual orientation and gender identity.

62. In addition to being limited on the basis of overbroad and vague defamation and counter-terrorism grounds, funding restrictions and prior censorship represent two main barriers for artistic freedom of expression in Turkey.[58] Several interlocutors pointed to the increasing use of certification systems to limit the circulation of films. The National Cinema Board, under the Ministry of Culture and Tourism, has the authority to evaluate films according to their consistency with public order, moral values, spiritual and physical well-being of youth, human dignity and copyright. Following changes to the Turkish Arts Council, the decision-making powers in the arts funding system has been shifted to State-appointed officials rather than being the responsibility of individuals representing artists' associations.

63. According to women's rights advocates, recent legislative changes have rolled back previous achievements in the area of women's rights. The Government has suspended or shut down many women's associations.[59] Advocates claim that they have lacked access to information to challenge the closures. While women's advocates stated that the European Union harmonization process had helped gender equality in Turkey overall, they expressed concern that enforcement and implementation of existing laws were lacking.

64. Groups advocating on behalf of children bemoaned the lack of protection for the rights of children to freedom of expression. They pointed to changes in the education system in the past years that have negatively affected children's rights to access information. In 2014, a reported 2,200 children were detained for participating in protests and demonstrations: and 50 per cent of those detained were reportedly under 11 years old. Children's rights organizations said that they faced a persistent threat of closure. A leading NGO in the field was among those shuttered on 22 November 2016.

65. The lack of legal and policy protections for lesbian, gay, bisexual, transgender and intersex individuals exacerbates a generally threatening environment for expression related to sexual orientation and gender identity. The Internet and digital security tools provide an important source of protection for such people in Turkey and the compromising of digital platforms adds to their vulnerability. Lesbian, gay, bisexual, transgender and intersex people have a pervasive fear of being targeted by the Government, a result of bans on their groups, targeting by pro-government media, lack of protection for lawyers and advocates, restrictions on their ability to hold marches or otherwise express their views and blocks on social media applications which are friendly to their situation.

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[57] See www.al-monitor.com/pulse/originals/2016/11/turkey-emergency-rule-cracks-down-on-ngos.html.

[58] See Freemuse, "Art under threat in 2016" (February 2017).

[59] Women's rights associations were among the NGOs closed down by decree No. 667. See joint statement issued by 50 women's rights associations (in Turkish only) available from www.agos.com.tr/tr/yazi/17013/kadin-orgutlerinden-kapatilan-derneklerle-ilgili-aciklama.

X. Judiciary, bar and due process

66. Article 19 (3) of the International Covenant on Civil and Political Rights requires not only clarity and precision in restrictions but also the availability of independent mechanisms to enable individuals to challenge them. In the present context, the judiciary appears to be increasingly unavailable to those charged under the antiterrorism and emergency laws. Nor does it appear available to the tens of thousands of individuals who have lost their employment as a result of vague accusations of association with the Gülenist movement and Kurdish organizations.[60] The following elements call into question the legality of the restrictions applicable to freedom of expression.

A. Structural changes to the judiciary

67. In meetings with the Special Rapporteur, members of the Court of Cassation and the Constitutional Court expressed pride in adhering to the European Convention on Human Rights and incorporating the jurisprudence of the European Court of Human Rights into their decisions. For significant periods over recent history, the judiciary had good reason for such pride, as the process of integration with the human rights mechanisms of Europe had a demonstrable impact on Turkish law.

68. The Special Rapporteur is concerned about structural changes to the judicial system which undermine the independence of the judiciary, even those that predate the emergency declared in 2016. Pursuant to Law No. 6545 of 2014, the system of criminal judicature of peace (or criminal peace judges) streamlines cases in such a way as to limit the ability to appeal and challenge emergency decrees and measures taken under such decrees. The criminal peace judges decide upon measures such as arrest, pretrial detention, search, seizure and physical examination of the suspect. According to the Code of Criminal Procedure, article 268 (3) (a), the appeal of a decision taken by a criminal peace judge shall be reviewed by another criminal peace judge. This system of horizontal appeal falls short of international standards and deprives individuals of due process and fair trial guarantees. The Special Rapporteur was alerted to several examples, indicating that this system does not take into account the case law in other Turkish courts, including the Constitutional Court, that may be consistent with international human rights standards.

B. Dismissal of judges and prosecutors

69. Since 2014, the executive branch has strengthened its control of the institutions of the judiciary and prosecution, including by the arrest, dismissal and arbitrary transfer of judges and prosecutors and threats against lawyers. This began following the split between the ruling Justice and Development Party and the Gülen movement, which had been closely allied until 2013.

70. Following the attempted coup, the authorities launched administrative investigations into the judiciary, dismissing an alarming number of judges and prosecutors on grounds of affiliation with the Gülen movement. In the first five months following the declaration of the state of emergency, 3,626 judges and prosecutors were removed under emergency decree.[61] At the time of the Special Rapporteur's visit, only 198 had been reinstated.[62]

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[60] See communication of the Special Rapporteur, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions of 1 December 2015, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=21403; and the reply of the Government of 31 December 2015, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=46778.

[61] See www.icj.org/turkey-emergency-measures-have-gravely-damaged-the-rule-of-law/.

[62] At the time of writing, that number had reached 4,317 according to Turkey Purge, see https://turkeypurge.com/. According to reports by Hurriyet News, a further five judges and prosecutors were reinstated in March 2017.

Several dozen judges, including one judge serving on the International Residual Mechanism for International Criminal Tribunals, Aydin Sedaf Akay, have been detained, even after the Mechanism ordered the Turkish authorities to cease all legal proceedings against Judge Akay and to take all necessary measures to ensure his release from detention. Furthermore, the Constitutional Court expelled two of its own judges.[63] In February 2017, another 227 judges and prosecutors were dismissed by the Board of Judges and Prosecutors following the inclusion of their names in lists annexed to emergency decrees.[64] By emergency decree No. 667, members of the judiciary who have been dismissed are entitled to file an action directly with the Council of State.

C. Lack of judicial review

71. Between the declaration of the state of emergency and December 2016, the Constitutional Court received approximately 60,000 applications for judicial review, many for claims in connection with arrests, pretrial detention and dismissal from employment, often connected to asserted membership in or beliefs associated with Gülenist or other organizations. During approximately the same period, more than 36,000 persons were jailed pending trial, and 110,000 were dismissed from public service.[65] Furthermore, following the decision of the Court of 12 October 2016 with regard to emergency decrees No. 668 and No. 669, the possibility for individuals to challenge the constitutionality of measures taken under emergency decrees has been, at best, made exceptionally difficult.

D. Access to a lawyer and due process

72. Emergency decree No. 667, the first declared following the attempted coup, increased the amount of time a detainee could be held without charge from 4 to 30 days (article 6 (a)). Article 19 of the Constitution allows for a maximum of four days' detention without charge and an extension of this period during a state of emergency. However, in the case of *Aksoy v. Turkey*, the European Court of Human Rights held that detention of 14 days without judicial review, even during a legitimate state of emergency, violated the human rights obligations of the State. Decree No. 667 also provides for officials to observe or even record meetings between pretrial detainees and their lawyers, in addition to restricting the choice of lawyers (article 6 (d)). Decree No. 684 reduces the maximum period for detention to seven days from the date of arrest, excluding the time spent taking the suspect to the nearest court.

73. The Special Rapporteur visited Silivri prison, as noted above, where lawyers are permitted only very brief meetings each week. During those meetings, they are unable to exchange documents and all conversations are allegedly monitored by the prison authorities. Lawyers with whom the Special Rapporteur met explained that in most cases neither they nor their clients were informed of the specific charges, making it difficult to prepare a defence. Individuals in detention were also unable to see their lawyers until shortly before being brought to court or being interrogated, adding an additional challenge for due process.

74. Under the state of emergency decrees, judges can order that lawyers be replaced. Detained persons in many instances do not have access to legal and other books and cannot make telephone calls. Access to family members is also restricted. Lawyers representing detained persons reported harassment pursuant to the course of their work. The Government has launched an investigation into the tax records of a number of lawyers and many have been investigated and detained.

[63] See www.hrw.org/news/2016/08/05/turkey-judges-prosecutors-unfairly-jailed.

[64] See http://aa.com.tr/en/turkey/turkey-dismisses-227-feto-linked-judges-prosecutors/754554.

[65] See www.reuters.com/article/us-turkey-security-idUSKBN13D0IU.

XI. Recommendations

75. **The situation of the right to freedom of expression in Turkey is in grave crisis and requires immediate steps for Turkey to be compliant with its obligations under international human rights law. The Special Rapporteur is not alone in his assessment. The recommendations that follow are largely consistent with those made by, among others, the Parliamentary Assembly of the Council of Europe, the Council of Europe Commissioner for Human Rights and the OSCE Representative on Freedom of the Media.**[66]

A. Media freedom and access to information

76. **The Special Rapporteur is seriously concerned at the deterioration of media freedom in Turkey, which predates the attempted coup. The state of emergency cannot justify the adoption of disproportionate and arbitrary measures representing a severe blow to freedom of expression, media freedom and access to information in Turkey.**

77. **The Special Rapporteur urges the Government to immediately release the journalists, writers, judges and academics who are detained pursuant to counter-terrorism legislation and emergency decrees. Nobody should be held in detention, investigated or prosecuted for expressing opinions that do not constitute an actual incitement to hatred or violence consistent with article 19 (3) and article 20 of the International Covenant on Civil and Political Rights.**

78. **The Special Rapporteur urges the Government to adopt all appropriate measures to ensure that press and other media and all individuals are able to comment on public issues and to inform public opinion without censorship or constraint.**

79. **The Government must reverse its closures of media outlets, including Internet media, networks and mobile telephony, and ensure that the suspension of media outlets occurs only in exceptional circumstances provided for by the law and only in accordance with appropriate judicial procedures. Such measures should always be subject to judicial review.**

B. Restraint on the substantial restrictions to the Internet

80. **The Special Rapporteur calls on the Government to review the Internet law, revise the broad authority to block and remove online content and introduce less intrusive measures. He urges the Government to refrain from excessive blocking and filtering of content and limit its requests for takedowns to actual cases of incitement, meeting the requirements of article 19 (3) and article 20 of the International Covenant on Civil and Political Rights.**

C. Review of emergency decrees

81. **The Government is obliged to ensure that any restriction on freedom of expression during the state of emergency is strictly proportionate to the exigency of the situation. The tests of necessity and proportionality are not suspended during a period of derogation linked with a state of emergency.**

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[66] See recommendation 2097 (2017) by the Parliamentary Assembly of the Council of Europe; Council of Europe Commissioner for Human Rights, "Memorandum on freedom of expression and media freedom in Turkey"; and statements by the OSCE Representative on Freedom of the Media, available from www.osce.org/fom/302351 and www.osce.org/fom/278326.

82. **With a view to ending the state of emergency, the Special Rapporteur urges the Government to reconsider whether the conditions at issue in July remain such as to justify its continuation. Regardless, he urges that the emergency decrees be reviewed and revised so as to ensure their consistency with international human rights norms and standards. In particular, persons deprived of their liberty pursuant to the emergency decrees must be entitled to initiate proceedings before a court to challenge the lawfulness of their detention, in line with article 9 of the International Covenant on Civil and Political Rights.**

83. **The Special Rapporteur urges the Government to ensure that anyone who has been a victim of unlawful arrest, detention or dismissal, or has any other legal claim, must have an enforceable right to review and remedy. Persons dismissed by virtue of emergency decree must be granted access to appropriate and independent judicial and administrative mechanisms to challenge the lawfulness of the decision and to obtain adequate reparation.**

D. Review of national legislation

84. **National legislation on defamation and countering terrorism ought to be brought into line with international standards. In particular, the Special Rapporteur urges the Government to review urgently the antiterrorism law so as to ensure that counter-terrorism measures are compatible with article 19 (3) of the International Covenant on Civil and Political Rights. Such offences as "encouragement of terrorism" and "extremist activity" and offences of "praising", "glorifying" or "justifying" terrorism, should be clearly defined to ensure that they do not continue to lead to unnecessary or disproportionate interference with freedom of expression.**

85. **The Special Rapporteur also calls on the Government to repeal articles 125 (3) and 299 of the Penal Code, which criminalize the defamation of public officials and the President of the Republic. The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties. The criminalization of individuals solely for criticism of the Government can never be considered to be a necessary restriction on freedom of expression. Even in the absence of repeal, the Special Rapporteur urges senior public officials to refrain from the harassing use of such tools to silence criticism in the name of "insult" of public authorities.**